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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,898	08/11/2004	Jennifer Fernandez	10939.3801	4897
22235	7590	12/21/2005	EXAMINER	
MALIN HALEY AND DIMAGGIO, PA 1936 S ANDREWS AVENUE FORT LAUDERDALE, FL 33316			MITCHELL, TEENA KAY	
			ART UNIT	PAPER NUMBER
			3743	
DATE MAILED: 12/21/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/710,898

Applicant(s)

FERNANDEZ, JENNIFER

Examiner

Teena Mitchell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Group III in the reply filed on 7/12/05 is acknowledged.

### ***Claim Objections***

Claim 7 is objected to because of the following informalities: In line 2, "... said encasement..." lacks antecedent basis. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

**Claim 3 is rejected under 35 U.S.C. 102(e) as being anticipated by Balogh, II (6,907,877).**

Balogh in an inhaler discloses: an inhaler body (14) that includes a cylindrical passage and an outlet passage for dispensing medication (Figs. 1-11); a medication container (16) that include a nozzle and spray outlet mountable within said inhaler body; a connector permanently attached to said inhaler body (136); and a spring loaded clip with jaws (140) connected to said connector whereby said inhaler body can be attached by the spring loaded clip to a garment securely.

***Claim Rejections - 35 USC § 103***

**The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:**

**(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.**

**The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

**Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balogh, II (6,907,877) in view of Buettell (2003/0037416).**

With respect to claim 7, Balogh discloses a strap (24) that is flexible however he does not disclose a spring-loaded clip connected to said flexible strap.

Buettell in a lanyard teaches a spring-loaded clip (20). It would have been obvious to one of ordinary skill in the art at the time the invention was made to

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substitute the clip of Balogh with any well known lanyard with clip including the lanyard with spring loaded clip taught by Buettell. It would have been an obvious matter of design consideration to a person of ordinary skill in the art to use a spring loaded clip because applicant has not disclosed that a spring loaded clip provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore would have expected Applicant's invention to perform equally well with any clip means, as such clips as alligator and or D shaped clips, are well known in the art for attaching purposes of one item to another. Therefore, it would have been an obvious matter of design consideration to modify Balogh to obtain the invention as specified in claim 7.

With respect to claim 8, note rejection of claim 7 above.

With respect to claim 9, Buettell teaches an alligator clip (20).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of art is cited to show clip devices: 2005/0066973; 5,860,417; 5,669,119; 5,092,018; 5,641,103.

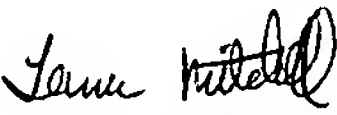
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (571) 272-

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4798. The examiner can normally be reached on Monday-Friday however the examiner is on a flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Teena Mitchell  
Primary Examiner  
Art Unit 3743

  
TKM